

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-127403-09

Date:

October 01, 2009

### Legend

Fund =

State X =

Advisor =

Accounting =

Firm

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Dear :

This responds to your letter dated June 1, 2009, submitted on behalf of Fund. Fund requests, under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, that its election, under section 855(a) of the Internal Revenue Code (Code), to treat certain dividends distributed after the close of a taxable year as having been paid during that taxable year, be considered as timely made.

### FACTS

Fund is a State X corporation organized on Date 1 and registered under the Investment Company Act of 1940 as a non-diversified, open-end management investment company. Fund's investment objective is to provide long-term growth of capital principally by investing in equity securities.

Fund represents that it elected to be taxed as a regulated investment company (RIC) pursuant to section 851 effective for its initial taxable year ending Date 2, and has operated in a manner intended to qualify as a RIC since making the election.

Fund represents that for its taxable year ending Date 3, consistent with its normal business practice, Fund did not distribute all of its taxable income to its shareholders by Date 3, and intended to declare and distribute undistributed amounts during the twelve month period following Date 3 in accordance with an election under section 855(a).

Fund represents that, in this regard, on Date 4, Fund declared dividends equal to or exceeding its undistributed investment company taxable income at Date 3 as part of its first regular dividend payment during the twelve-month period following Date 3, and such dividends were paid on Date 5.

Fund engaged Advisor as its investment advisor and tax matters administrator. Advisor engaged Accounting Firm to prepare Fund's federal income and excise tax returns, including the preparation of extensions of time to file. Fund's treasurer is responsible for the final review of Fund's income and excise tax returns and for the timely execution and filing of such returns, including elections.

Fund's Form 1120-RIC for its taxable year ending Date 3 was due on or before Date 6. Accounting Firm prepared Form 7004 for Fund to extend the time prescribed by law for the filing of its Form 1120-RIC for Fund's taxable year ending Date 3, but Fund did not file the Form 7004 to obtain the extension.

In the latter part of Year 1, Fund's treasurer left the company. Accounting Firm, as it had in years past, mailed the Form 7004 to the former treasurer at the office from which he had worked, rather than to the new treasurer at the office from which he worked. Upon discovery that no extension had been filed for Fund, Accounting Firm immediately began preparing Fund's Form 1120-RIC for its taxable year ending Date 3, and the return was prepared as if Fund had made a timely election under section 855. Advisor filed the return on Date 7. Thereafter, Fund engaged Accounting Firm to assist with the preparation of this ruling request.

Fund makes the following additional representations:

1. The request for relief was filed by Fund before the failure to make the regulatory election was discovered by the Service.

2. Granting the relief will not result in Fund having a lower tax liability in the aggregate for all tax years to which the regulatory election applies than that Fund would have had it the election had been timely made (taking into account the time value of money).
3. Fund did not seek to alter a return position for which an accuracy related penalty has been or could have been imposed under section 6662 of the Code at the time Fund requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not file the election.

### **APPLICABLE LAW**

Section 855(a) of the Code provides that if a RIC (1) declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period for any extension of time granted for filing such return), and (2) distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the company elects in such return in accordance with regulations prescribed by the Secretary, be considered as having been paid during such taxable year, except as provided in subsections (b), (c) and (d).

Section 1.855-1(b)(1) of the Income Tax Regulations sets forth the method of making the election and provides that the election must be made in the return filed by the RIC for the taxable year.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted

reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

### **HOLDING**

Based upon the facts presented and representations made by Fund, we hold that Fund has demonstrated good cause for the granting of relief under section 301.9100-3. Accordingly, Fund's election under section 855(a) on its federal income tax return filed on Date 7 for its taxable year ending Date 3 will be treated as having been timely made.

No opinion is expressed as to whether Fund's tax liability is not lower in the aggregate for the year to which the election applies than Fund's tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax return involved, the director will determine the Fund's tax liabilities for the year involved. If the director determines that the Fund's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Fund's election under section 855(a) of the Code. This ruling does not relieve Fund from any penalty that it may owe as a result of its failure to file its federal income tax return on time. Except as specifically ruled upon above, no opinion is expressed or implied as to any federal excise or income tax consequences regarding Fund. In particular, no opinion is expressed or implied whether Fund qualifies as a RIC that is taxable under subchapter M, part 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Alice M. Bennett  
Alice M. Bennett  
Branch Chief, Branch 3  
Associate Chief Counsel  
(Financial Institutions & Products)